



## Office of Multifamily Housing Assistance Restructuring

### Frequently Asked Questions on Mark-to-Market For Property Owners and Managers Revised September 30, 2002

#### Mark-to-Market Information

1. Where can I get information on the M2M program? *The OMHAR web site (<http://www.hud.gov/offices/omhar>) contains the Operating Procedures Guide and a wealth of additional information. In addition, the OMHAR Resource Desk (<http://www.omhar.com>) is a searchable archive of questions, answers, and document resources on the Mark-to-Market program.*

#### M2M Economics

2. What are the Owner and Purchaser Incentives?

*The incentives were announced in September 2000. For owners, incentives include the Capital Recovery Payment, Incentive Performance Fee, 100% financing of the Initial Deposit to Replacement Reserves (IDRR), 80% financing of transaction costs, ability to leave “out year” HAP contracts in place after M2M, and communication improvements such as giving owners early access to the PAE’s Rent Comparability Study and Physical Condition Assessment. For purchasers, incentives include an allowable Developer Fee, 80% financing of certain acquisition-related transaction costs, and (for qualified nonprofit purchasers) 2<sup>nd</sup> mortgage relief. The full matrix of incentives is available for download at <http://www.hud.gov/utilities/intercept.cfm?/offices/omhar/owners/matrix.pdf>.*

3. What are the benefits of M2M?

*In general, the M2M program can remove any barriers that stand between the property and its long-term physical, financial, and administrative viability. Most properties have their Reserve for Replacements deposits increased substantially in M2M.*

*M2M uses sustainable underwriting principles, including a minimum 7% residential vacancy / bad debt allowance, a minimum 15% non-residential vacancy / bad debt allowance, and conservative operating expenses reflecting current costs. Debt service coverage is the greater of (a) 1.20:1 to 1.40:1 depending on property and market strength; (b) the IPF (generally 3% of collected income); and (c) an "operating expense cushion" (generally 7% to 10% of total operating expenses). Because properties are viable at market rents, owners are not as vulnerable to appropriations risks. After M2M, properties typically are positioned for future success.*

4. How can I compare my return pre- and post-M2M restructuring?

*Post-M2M, owners are eligible for an Incentive Performance Fee, generally 3% of collected income. In addition, owners are eligible to receive up to 25% of remaining positive Surplus Cash. Many owners find that, in combination, these benefits provide more return than before M2M. OMHAR has created "freeware," a downloadable worksheet that allows you to enter basic property data and see estimated M2M results. It is easy to use, and is available on the OMHAR website at (<http://www.hud.gov/offices/omhar>).*

5. How long can the Owner obtain existing rents while in M2M processing?

*The M2M statute and regulations provide OMHAR the option to continue existing (above market) rents for up to twelve months to facilitate restructuring.*

6. How long are terms of the M2M HAP Contract and the Use Agreement?

*Currently, for M2M debt restructure transactions, the typical post-M2M project-based HAP contract has a term of twenty years, subject to annual appropriations. The typical M2M Use Agreement has a term of thirty years. Approved OMHAR-Lite properties currently receive five-year HAP contracts, subject to annual appropriations.*

7. What benefits do non-profit owners receive (compared to for-profits) for their participation in the M2M Program?

*The M2M program makes two distinctions. First, all nonprofit owners and purchasers are eligible for cancellation of up to 100% of any Contingent Repayment Note ("third mortgage"). Second, certain "qualified" nonprofit purchasers (see OPG Appendix C) are eligible to request and receive cancellation, modification or assignment of the Mortgage Restructuring Note ("second mortgage").*

## **“Out Year” HAP Contracts and M2M**

8. I have an existing HAP contract that does not expire for another three years. What is the benefit for bringing my property in early to the M2M Program?

*Many owners in your position are facing financial stress, in the form of negative cash flow, inadequate limited distributions, and/or negative Surplus Cash. Pursuing M2M now can deal with the causes of financial stress, for example by clearing aged accounts payable at the M2M closing. After M2M, the property should be positioned to generate positive Surplus Cash, to pay Incentive Performance Fees, and to generate distributable cash flow. In addition, if you pursue M2M now, your existing HAP contract can stay in place, and the above-market portion of the rents can be used in the M2M transaction, for example to make additional Replacement Reserve deposits or to make additional principal payments on the Mortgage Restructuring Note.*

## **The M2M Process**

9. What can the Owner do to ensure the M2M restructuring proceeds as quickly as possible?

*In our experience, owners will benefit from early and active engagement in the M2M process. Keep all partners, and your legal, financial and tax advisors, advised on the M2M program and on the property's progress. Provide needed due diligence information as soon as possible, especially information on bond-financed properties, and copies of partnership agreements (including all amendments). Review and provide comments on the PAE's Rent Comparability Study and Physical Condition Assessment promptly after you receive copies. Work closely with the PAE to document and analyze the proper level of operating expenses (e.g., provide insurance quotes, provide contact information for taxing authorities and utility companies, and identify any capital items that were expensed in the maintenance expenses for audited financial statement purposes. Stay in contact with the PAE, so that when the Restructuring Commitment arrives, there will be no surprises, and you will be ready to proceed with partnership consents and move to closing. Average processing times today are less than 12 months for Fulls, and less than 6 months for Lites.*

10. How long does it take to get a PAE assigned? Can the Owner have input on which PAE is assigned? How long will the process then take?

*Properties are typically assigned to PAEs within two to three days after referral to OMHAR. Generally, OMHAR assigns properties to PAEs based on current PAE capacity and geography.*

11. What appeal rights do Owners have?

*OPG Section 6-9 provides for a two level appeal process. After the owner receives either the Restructuring Plan, a notice that OMHAR has rejected the Restructuring Plan, a notice that M2M processing will be discontinued, or a notice of ineligibility, the owner may appeal to the OMHAR Portfolio Director. After receiving the Portfolio Director's final decision, the owner may request that OMHAR HQ make an administrative review of the Portfolio Director's decision.*

12. What information should owners submit in an appeal?

*First, OMHAR believes that if owners engage early and actively in the M2M process, any issues will be surfaced and resolved early, and there will be no need for appeals. In our experience, it is rare that appeals raise issues that could not have been addressed much earlier. When submitting appeals, owners need to demonstrate that the PAE's decision was not in accordance with M2M program requirements, was based on faulty information (and that the owner is now providing the accurate information), or was unreasonable at the time it was made.*

### **Selling and Purchasing Properties in M2M**

13. What is the benefit of selling a property to a non-profit group?

*That depends on the value of the property in the eyes of a potential non-profit purchaser. Purchasers may have access to resources that the current owner does not. In addition, certain nonprofit purchasers (see OPG Appendix C) are eligible for 2<sup>nd</sup> mortgage relief. Accordingly, it is possible that a property may have a higher value to a purchaser than to the current owner.*

14. Are there benefits to the Owner selling the property before, during, or after M2M restructuring?

*That will depend on the property's value to a potential purchaser. Purchasers have told OMHAR that they prefer to acquire properties prior to M2M, so that the purchaser can be involved in the development of the Restructuring Plan.*

### **The HUD Field Office Role in M2M**

15. What is the role of the HUD Project Manager during the M2M restructuring period?

*The PM is a valued advisor to OMHAR and to the PAE. The PM has many opportunities to provide input into the M2M process. In addition, the Field Office*

*executes the post-M2M HAP contract and resumes responsibility for the property following the M2M closing.*

16. When are the HUD Field Offices required to get involved during the M2M Process? Are there other areas where they may be able to participate?

*The Field Office executes the post-M2M HAP contract and resumes responsibility for the property after the M2M closing. Field Offices have the opportunity to discuss any concerns with the PAE at any time, participate in one or both tenant meetings, provide input in the Rental Assistance Assessment Plan, participate in discussions to determine if a property is ineligible, and participate in discussions if M2M processing may have to be discontinued.*

### **More Information**

17. Who do I contact at OMHAR with a specific question?

*See the attached functional directory for a listing of OMHAR contacts.*



# OMHAR

## Functional Telephone Directory

**202.708.0001**  
 November 2002

<b>2530 Issues</b>	Alberta Zinno, 3517
<b>401.600 Waivers</b>	Alberta Zinno, 3517
	Rita Brown, 312.886.4133
<b>Appeals</b>	April Chang, 3613
<b>Bond Financing</b>	Linda Field, 3614
<b>Closing/Post Closing</b>	Patricia Bolster, 3785
<b>Environmental Issues</b>	Norm Dailey, 3786
<b>For-Profit Owners/Buyers</b>	Dennis Manning, 3871
<b>IRPs/236 &amp; 223(a)7</b>	Jo Anne Garrison, 3651
<b>MIS System/OMHAR Web</b>	Catharine Vernon, 3771
	Sidra Goldwater, 3723
<b>MF HUB/PC Outreach</b>	Ted Toon, 3768
<b>Multifamily Coordination</b>	Alberta Zinno, 3517
<b>Multiple Owner Initiative</b>	Donna Rosen, 3768
<b>Non-Profits</b>	Dennis Manning, 3871
<b>Office Director</b>	Hank Williams, 3755
<b>Out-Year Policy</b>	Norm Dailey, 3786
<b>PBCA/Housing Coordination</b>	Alberta Zinno, 3517
<b>Prepayment Lockouts</b>	Jo Anne Garrison, 3651
<b>Production</b>	Paige Warren, 3755
<b>Project Eligibility</b>	Norm Dailey, 3786
<b>Section 8</b>	Alberta Zinno, 3517
<b>Surplus Cash Distributions</b>	April Chang, 3613
<b>Underwriting</b>	April Chang, 3613

Central Production Office  
 John Prusch, Portfolio Director, 3764  
 Donna Rosen, Portfolio Director, 3768  
 1280 Maryland Ave, SW, Suite 4400  
 Washington, DC 20024

Chicago Production Office  
 Harry West, Portfolio Director  
 200 W Adams St  
 Suite 2610  
 Chicago, IL 60606  
 312-886-4133

New York Production Office  
 Rick Daugherty, Portfolio Director  
 26 Federal Plaza, Room 32116  
 New York, NY 10278  
 212-264-0903

San Francisco Production Office  
 Dennis Shaw, Portfolio Director  
 Philip Burton Federal Bldg  
 450 Golden Gate Ave, Rm 10-4580  
 San Francisco, CA 94102  
 415-436-8552